

**Exhibit B to the Declaration of David H. Kramer**

Oct. 3. 2005 5:00PM JAMS

No. 2929 P. 3/27

Hon. Read Ambler (Ret.)  
State Bar No. 44156  
JAMS  
160 West Santa Clara Street  
Suite 1150  
San Jose, California 95113  
(408) 288-2240  
Fax (408) 295-5267

Discovery Referee

(ENDORSED)  
**FILED**

SEP 29 2005

KIRI TORRE  
Chief Executive Officer/Clerk  
Superior Court of CA County of Santa Clara  
BY M. HJDUK DEPUTY

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA  
RECEIVED SEP 30 2005

AFFINITY ENGINES, INC., a Delaware  
Corporation,

Plaintiff,

vs.

GOOGLE INC., a Delaware Corporation,  
et al.,

Defendants.

Case No. 104CV020368

RECOMMENDATION AND  
(PROPOSED) ORDER GRANTING  
GOOGLE'S MOTION TO ENFORCE  
EXISTING PROTECTIVE ORDER

Defendant Google Inc., ("Google") has filed a motion to enforce the Court's existing protective order of May 27, 2005 regarding the depositions of Google's co-founders and co-Presidents, Larry Page ("Page") and Sergey Brin ("Brin"). Plaintiff Affinity Engines, Inc. ("Plaintiff" or "AEI") has filed an opposition to the motion. The motion was heard telephonically on August 22, 2005 by referee Hon. Read Ambler (Ret.). The referee has considered the papers and the arguments of counsel.

Background

On May 27, 2005, the Court entered an order granting Google's motion for protective order regarding the depositions of Page and Brin ("Order"). The Order provides, *inter alia*:

Affinity Engines, Inc. v. Google Inc. et al.  
104CV020368

RECOMMENDATION AND (PROPOSED) ORDER GRANTING  
GOOGLE'S MOTION TO ENFORCE EXISTING PROTECTIVE ORDER

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No.2929 P. 4/27

1 Defendant's motion for protective order, requiring [Plaintiff] to take the depositions of  
2 Marissa Mayer, Orkut, and Google's PMK take place before the depositions of Page and  
3 Brin is GRANTED. Defendant's motion for protective order limiting the deposition of  
4 Page and Brin to the issues of (1) ownership of the software at issue; (2) defendant's hiring  
5 of Buyukkikten; and (3) defendant's decision to convert Buyukkikten's prototype  
6 software, which plaintiff claims it owned, is GRANTED.

7 Plaintiff took and completed Marissa Mayer's deposition on June 25, 2005. On June 22-  
8 24, 2005 Plaintiff commenced but did not complete Buyukkikten's deposition. Beginning on June  
9 30, 2005, the parties disagreed regarding whether the continuation of Buyukkikten's deposition  
10 would impact Plaintiff's taking of the depositions of Page and Brin. On July 6, 2005, Plaintiff  
11 formally noticed the depositions of Sergey Brin and Larry Page for August 24 and August 26. On  
12 July 15, 2005, Plaintiff served upon Google an amended notice for the deposition of Google,  
13 which includes 38 topics for deposition. On August 4, 2005, Plaintiff obtained deposition  
14 testimony from Google on five of the topics. The topics upon which Plaintiff deposed Google  
15 cover some, but not all, of the three specified areas upon which the Order allows Plaintiff to  
16 question Brin and Page.

17 On August 9, 2005, Plaintiff filed a motion to compel testimony responsive to Plaintiff's  
18 amended notice of deposition of Google. On August 18, 2005, counsel for Google sent an e-mail  
19 to counsel for Plaintiff asserting that because the Buyukkikten deposition was not closed, and the  
20 corporate deposition of Google had not been completed, Plaintiff's attempt to depose Page and  
21 Brin was premature under the Order.

22 Although the disagreements regarding the scheduling of the Page and Brin depositions  
23 began in late June, the issue was first presented to the referee on August 19th by way of Plaintiff's  
24 noticed *ex parte* telephonic request for a protective order prohibiting the depositions of Page and  
25 Brin prior to completion of the depositions of Buyukkikten and Google. The referee treated the  
26 request as an *ex parte* request for order shortening time, and set the motion to be heard on August  
27 22, 2005. The referee set an abbreviated briefing schedule with which the parties complied.

28 The referee has considered the papers and the arguments of counsel.

29 Affinity Engines, Inc. v. Google Inc. et al.  
104CV020368

RECOMMENDATION AND (PROPOSED) ORDER GRANTING  
GOOGLE'S MOTION TO ENFORCE EXISTING PROTECTIVE ORDER

Oct. 3. 2005 5:01PM JAMS

No. 2929 P. 5/27

Discussion

The Order requires Plaintiff to "take" the deposition of Ms. Meyer, Orkut Buyukkoken and Google's PMK before the depositions of Page and Brin. At least in the present context, the referee understands the Order to require Plaintiff to complete the depositions of Meyer, Buyukkoken and Google--at least as to the three topics iterated in the Order--prior to deposing Page and Brin. Based upon the papers and the argument presented during the hearing it is clear that Plaintiff has not completed the depositions of Google or Buyukkoken. For this reason, Plaintiff's attempt to depose Page and Brin on August 24 and 26, 2005 is in contravention of the Order. Accordingly, the referee recommends that Google's motion to enforce the Court's existing protective order of May 27, 2005 regarding the depositions of Page and Brin be granted.

*Hours Spent, Fees Charged and Recommended Allocation*

The referee has spent 3.5 hours on this motion, billed at the rate \$700/hr.; George Delaney, the agreed research attorney, has spent 2.5 hours on this motion, billed at the rate \$150/hr.; the parties have been billed a JAMS administrative fee of \$300; and there are conference phone charges to be billed hereafter.

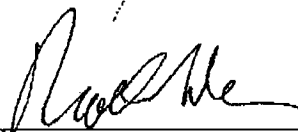
It is recommended that the fees be allocated 50% to each party.

**RECOMMENDATIONS**

It is respectfully recommended that the court adopt the recommendations set forth below:

1. That the motion to enforce the Court's existing protective order of May 27, 2005 regarding the depositions of Page and Brin be granted.
2. That the JAMS fees and charges as set forth above for this motion be allocated 50% to each party.

Dated: August 22, 2005

  
Hon. Read Ambler (Ret.)  
Referee


Oct. 3. 2005 5:01PM JAMS: No.2929 P. 6/27

**ORDER**

Having read the report of referee set forth above, and good cause appearing, the recommendations set forth in the report are each approved and made orders of this court.

IT IS SO ORDERED.

Dated: Sept. 29, 2015

  
Hon. William J. Elfving  
Judge of the Superior Court

Affinity Engines, Inc. v. Google Inc. et al.  
104CV020368  
RECOMMENDATION AND (PROPOSED) ORDER GRANTING  
GOOGLE'S MOTION TO ENFORCE EXISTING PROTECTIVE ORDER

Oct. 3, 2005 5:01PM JAMS

No. 2929 P. 7/27

**PROOF OF SERVICE BY FACSIMILE AND MAIL**

I, Derek Ryan, not a party to the within action, hereby declare that on August 22, 2005 I served the attached Recommendation and (Proposed) Order Granting Google's Motion to Enforce Existing Protective Order on the parties in the within action by mailing and faxing true copies thereof, at San Jose, California, addressed as follows:

James A. DiBoise Esq.  
Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304-1050 USA  
Tel: 650-320-4895  
Fax: 650-493-6811

David H. Kramer Esq.  
Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304-1050 USA  
Tel: 650-849-3256  
Fax: 650-493-6811

Colleen Bai Esq.  
Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304-1050 USA  
Tel: 650-493-9300  
Fax: 650-493-6811

Steven Manchester Esq.  
Manchester, Williams & Seibert  
84 W. Santa Clara St.  
Suite 630  
San Jose, CA 95113-1808  
Tel: 408-287-6193  
Fax: 408-287-1554

G. Hopkins Guy, III Esq.  
Orrick, Herrington & Sutcliffe LLP  
1000 Marsh Rd.  
Menlo Park, CA 94025  
Tel: 650-614-7452  
Fax: 650-614-7401

Michael A. Berta Esq.  
Wilson Sonsini Goodrich & Rosati  
One Market, Spear Tower  
Suite 3300  
San Francisco, CA 94105 USA  
Tel: 415-947-2000  
Fax: 415-947-2099

Tait Graves Esq.  
Wilson Sonsini Goodrich & Rosati  
One Market, Spear Tower  
Suite 3300  
San Francisco, CA 94105 USA  
Tel: 415-947-2000  
Fax: 415-947-2099

Bart Volkmer Esq.  
Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304-1050 USA  
Tel: 650-493-9300  
Fax: 650-493-6811

Eric L. Wesenberg Esq.  
Orrick, Herrington & Sutcliffe LLP  
1000 Marsh Rd.  
Menlo Park, CA 94025  
Tel: 650-614-7400  
Fax: 650-614-7401

Rory Bens Esq.  
Orrick, Herrington & Sutcliffe LLP  
1000 Marsh Rd.  
Menlo Park, CA 94025  
Tel: 650-614-7400  
Fax: 650-614-7401

Gabriel M. Ramsey Esq.  
Orrick, Herrington & Sutcliffe LLP  
1000 Marsh Rd.

Peter O'Rourke Esq.  
Orrick, Herrington & Sutcliffe LLP  
1000 Marsh Rd.

Oct. 3. 2005 5:02PM JAMS

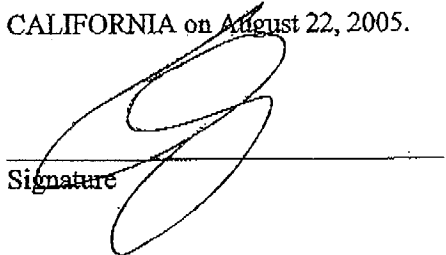
No. 2929 P. 8/27

Menlo Park, CA 94025  
Tel: 650-614-7400  
Fax: 650-614-7401

Menlo Park, CA 94025  
Tel: 650-614-7400  
Fax: 650-614-7401

I declare under penalty of perjury the foregoing to be true and correct. Executed at San Jose,  
CALIFORNIA on August 22, 2005.

Signature

A handwritten signature in black ink, consisting of a large, stylized 'S' or 'B' shape, is written over a horizontal line. The signature is positioned to the right of the word 'Signature'.